

Council on Worker's Compensation
Meeting Minutes
Madison, Wisconsin
February 28, 2001

Members present: Mr. Bagin, Mr. Buchen, Ms. Coakley, Mr. Gleichert, Mr. Grassl, Rep. Hundertmark, Mr. Muelver, Mr. Newby, Ms. Norman-Nunnery, Mr. Olson, Ms. Vetter, Mr. Welnak.

Staff present: Mr. Conway, Mr. O'Malley, Mr. Shorey, Mr. Smith, and Ms. Thomas.

Liaison present: Mr. Leonard

1. **Minutes.** Ms. Norman-Nunnery convened the meeting in accordance with Wisconsin's open meetings law. Mr. Bagin moved adoption of minutes of the October 28, 2000 meeting. Mr. Gleichert seconded the motion. The motion passed unanimously.

2. **Introductions.**

State Representative Jean Hundertmark. Ms. Norman-Nunnery introduced State Representative Jean Hundertmark, Chair of the Assembly Committee on Labor, who is replacing State Representative Dan Vrakas as the Legislature's ex officio member on the Council. Ms. Hundertmark said she hoped to continue the close, bi-partisan working relationship between the Council and the Legislature pursued by Rep. Vrakas. She also introduced her Research Assistant, Jason Rostan, who will be assisting her on Council matters.

DWD Secretary Jennifer Reinert. Ms. Norman-Nunnery introduced Secretary Reinert, Secretary, Department of Workforce Development. Ms. Reinert expressed her strong support for the Council process. She also led the members in thanking Don Grassl, Vice President, Employers of Wausau, for his many years of service on the Council. She introduced Ms. Jodie Connor from Employers of Wausau whom she had appointed to replace Mr. Grassl effective with his retirement on March 1, 2001. Mr. Grassl thanked everyone for his or her help and good wishes.

3. **Legislative proposals.** Mr. Smith reviewed more than 50 proposals from the public, members of the Legislature and the Department. He distributed 3 handouts that are available on the Department's website, <http://www.dwd.state.wi.us/wc/wcac/minutes.htm>:

- Department's Legislative Proposals, February 28, 2001 (28 sections)
- Proposals from the Legislature and Public, February 28, 2001 (27 sections)
- Addendum to the Public Proposals, February 28, 2001 (2 sections).

While there were no votes or formal discussion, Mr. Bagin did ask if the Department would object to changing the 14-day period to 30 days in the Department's proposed change to s. 102.32(6). He said it is difficult for some payers to issue checks for non-routine claims within a 14-day period. Mr. Smith and Mr. Shorey said they had no objection; 14 days was chosen solely because of the prompt-payment standard in Wis. Admin. Code DWD 80.02(3)(b). The Council agreed to discuss the proposals more formally at a future meeting.

4. **DWD 80.67 relating to insurance company name changes.** Mr. Smith reviewed a rule change proposed by DWD, the Office of the Commissioner of Insurance (OCI) and the Wisconsin Compensation Rating Bureau. The new rule would relax regulatory requirements as follows (except that the footnotes would not appear in the rule):

DWD 80.67 **INSURER NAME CHANGE**. A worker's compensation insurer shall notify the department and the Wisconsin compensation rating bureau in writing 30 days¹ before the effective date of a change in its name.² The insurer shall comply with the name change requirements in its state of domicile and in the State of Wisconsin.³ On or before the effective date of an approved name change, the insurer shall notify each of its employers insured under ch. 102., Stats., that the insurer's name is changed. Insurers shall notify employers by an endorsement to the employer's existing policy that states the insurer's new name, or by any other means acceptable to the department.⁴ The insurer shall file a copy of the endorsement with the Wisconsin compensation rating bureau by personal service, facsimile or certified mail⁵ at the same time that it provides notice to the employer.

¹ The current rule specifies 90 days advanced notice. This has been changed to 30 days because OCI only requires 30-days-advanced notice for an insurer to change a "form." This form-change notice is how OCI regulates name changes and reorganizations. The DWD rule should not ask more than OCI does.

² This rule deletes the notice requirement relating to organizational changes affecting ownership or control of the insurance company because: (1) OCI gets notice of those changes under its own regulatory framework; (2) neither WCD nor WCRB takes any action as a result of organizational changes.

³ Most non-domiciled insurers are good about notifying Wisconsin's OCI and their Wisconsin insured employers timely. However, a few only notify the regulator in their domicile state timely. OCI requested this sentence to remind insurers that filing only in an insurer's domicile state is not enough.

⁴ The current rule is too prescriptive. It only allows one process. It requires the insurer to issue a new policy. This rule assumes that every insurer will want to use the endorsement process to notify every one of its employers. However, this new rule also leaves open the option for insurers to use some other process. For example, an insurer may want to notify the subset of employers whose policies are expiring merely by reissuing a new policy. As long as the notice is acceptable to DWD (and note: DWD could find it acceptable after-the-fact under this language), why not leave everyone some "wiggle room."

⁵ The current rule incorrectly cross references s. 102.31(1). I believe the intent is to specify the means of transmission identified in s. 102.31(2)(a); that is, personal service, fax or certified mail. Rather than make everyone check the cross referenced statute, let's just specify what we want.

Mr. Smith said no one appeared at the public hearing held by the Department on the rule. He said the next step was to submit it to the Legislature. Assuming there are no problems, the rule would probably take effect on August 1, 2001. Mr. Bagin moved that the Council approve the rule as drafted. Mr. Newby seconded the motion. The motion passed unanimously.

5. **Department of Commerce Safety Investigations.** Mr. John Conway, Deputy Administrator of the Division, discussed agency efforts to find a new resource for conducting the safety investigations that were formerly done by the Division of Safety and Buildings in the Department of Commerce. Four options are currently being reviewed:

1. Try to convince Safety and Buildings to continue to perform this function. At this time, based on discussions that Ms. Norman-Nunnery has had with Secretary Blanchard of the Department of Commerce, this option does not appear feasible.
2. Consider the federal OSHA as a resource. WC administrators met with OSHA and found that, although OSHA is very interested in getting accident referrals from WC, they cannot really perform the investigations in the manner that meets WC needs. For example, certain industries are out of OSHA jurisdiction, and OSHA is unable to directly tie a safety violation to a specific accident.
3. Review private sector possibilities. A meeting was held between WC and Wisconsin Manufacturers and Commerce affiliate, Brian Russler. Brian directs the private, not-for-profit Wisconsin Safety Council, which is the state chapter of the National Council on Safety. Brian is very interested in working with WC to conduct the investigations. He works with over one hundred safety specialists around the state who provide consultation, safety inspections and training to businesses and industry. Concerns with this option pertain to a possible bias or conflict of interest due to the affiliation with WMC.
4. Create a new unit in DWD/WC. This would cost approximately \$250,000. The main concern is that it creates new government that duplicates what other government entities already do.

There was a consensus among Council members that the Division should look further at possibilities with State OSHA, rather than the federal agency. They also recommended that the private option should be further reviewed with safety service providers directly, rather than through WMC.

6. **Department's biennial budget request.** Ms. Norman-Nunnery said the Governor's budget did not contain all the items requested by the Department. She said Department staff were still reviewing the Governor's recommendations to see how they affected the request for two additional administrative law judges and one para-legal, and the impact on the Division's request for information technology services. Mr. Newby and Mr. Bagin said they would urge

the co-chairs of the Assembly and Senate Labor Committees to provide funding for the positions and carefully review the need for further automation. They said the Division's automated systems provided efficient service to employers, insurers and employees.

7. **Adjournment.** The meeting adjourned. The next meeting is scheduled for March 14, 2001 in Madison, at 201 East Washington Avenue, Room D203 at 10:00 a.m.